*A Treatise on the Law of Citizenship in the United States.* By PRENTISS WEBSTER, of the Boston Bar. Albany, N. Y., Matthew Bender, 1891. — 8vo, xxiv, 338 pp.

The title of Mr. Webster's book is misleading. The work is not primarily a statement of the law of citizenship as it is, but an expression of the views of the author as to what that law ought to be. That Mr. Webster declares these views of his to be the law of nature and of nations does not modify their purely subjective character. That certain other writers agree with him does not elevate their common theories to the rank of law of any sort. It is an axiom of modern political science that there is no international law except that which is actually recognized in the practice of modern civilized states. It is an axiom, again, that international law as such is law of an imperfect sanction, prevailing within each state only by virtue of its express or tacit acceptance by the state in question. But Mr. Webster does not regard these principles as axiomatic. He believes that there is a law of nature which is *eo ipso* the law of nations. He believes that this system of law overrides national (or, as he calls it, "local") law. And of this natural law he believes that he and other writers on the subject are authoritative interpreters. When the highest courts of any country differ with him, he regards their decisions as erroneous in law.

In the main, citizenship is discussed by the author from the international point of view. Here he takes two positions which no one will be likely to dispute, namely, that every man should have one and only one citizenship, and that he should be free to change it. But in declaring that both these principles form part of existing international law, our author goes too far. The right of expatriation is unquestionably coming to be regarded as a principle of international law; but its general recognition is only a quarter of a century old, and its observance still rests either upon treaties or upon rules of municipal law. And the broader principle of one exclusive citizenship has not yet obtained any general recognition. As long as some states impose citizenship upon all persons born within their territory; others upon all children born to citizen fathers; others upon all children born to fathers domiciled within the territory; others upon all persons who acquire domicile within the territory; and yet others upon two or more of these various classes at the same time, — so long must cases of dual citizenship arise. And when they arise, there is no solution of the problem except that which was formulated, under analogous circumstances, in the second century: "Cum te Byblium origine, incolam autem apud Berytios esse proponis, merito apud utrasque civitates muneribus fungi compelleris." The double citizen is subjected, within each jurisdiction, to the territorial law; nor,

in modern international practice, does the one state undertake to protect him against the other. The only exception to this rule is found in the attempt of the United States (since 1859) to protect its naturalized citizens against their original states; and the attempt has been successful only in so far as the foreign states have recognized, by law or by treaty, the right of expatriation. In other cases the rule stands unshaken. It is recognized in our own diplomacy, although Mr. Webster asserts (page 97) that it is not. He does not seem to have consulted our consular regulations; nor, although he cites it, does he seem to understand the case of Santiago Smith's children.

The difficulties which result from the conflict of "local" rules disappear, according to Mr. Webster, in the presence of a higher rule. It is his contention that the law of nature and of nations furnishes a positive rule concerning the acquisition of citizenship at birth, and that this rule is the *jus sanguinis*, *i.e.* the inheritance of the father's citizenship. Now not only is this rule not a rule of international law at the present day, but it may safely be predicted that it never will be. The whole tendency of modern thought is indeed to demand that every person who is a member of a particular national society shall also be a member of the state in which that society finds its political organization. Every one, for example, who is really a Frenchman in his instincts and ideas ought to be a French citizen. But blood is only one of the elements that determine nationality in this broad sense. Education is a very important factor, and education means place of residence during minority. Which is the more truly a Frenchman — the child of a Frenchman, born, educated and permanently established in England, or the child of a Russian, born, educated and domiciled in France? If there be any doubt about the children, how will it be with the grandchildren and great-grandchildren, if the domicile of the family remains unchanged? Family domicile is the factor of prime importance; and it is the great defect of the *jus sanguinis* that it wholly ignores this factor. The *jus sanguinis* tends, as Lord Bacon prophetically declared, to establish and maintain whole tribes of aliens within the territory of each state. Because of this defect, the system of descent is actually losing ground everywhere. It prevails to-day in only a small part of the civilized world, and precisely in that part where there is the least immigration, *viz.* the northern and central portions of the continent of Europe. In France, where the *jus sanguinis* was introduced by the Code Napoléon, it has practically been abandoned. The reaction which began in the laws of February 12, 1851, and December 16, 1874, has culminated in the law of June 26, 1889, which practically establishes the principle of the family domicile. This principle had already been incorporated in the Italian and Dutch laws; and it is probably here rather than in the

pure *jus sanguinis* that we have the germ of the general law of the future. Of this whole development Mr. Webster appears to know nothing.

In his fragmentary and unsatisfactory discussion of the law of the United States, the author endeavors to show that his law of nature actually obtains in this country. He maintains that neither *jus soli* nor the doctrine of indissoluble allegiance (*i.e.* allegiance dissoluble only by the consent of the sovereign) was ever received in the United States. The decisions and dicta of the Supreme Court affirming the existence of these common-law principles in our country were based upon the erroneous assumption, he holds, that there was in this country a sovereignty which replaced the English crown and succeeded to its rights. He asserts that the colonists established an entirely different kind of state, — a state based on social contract, in which the single citizen enters into relations with his fellow-citizens only, and not with any sovereign power. This, at least, is what he seems to say in several rather nebulous passages. He seems to hold that there is no sovereignty in our political system.

It is perhaps for this reason that, when he comes to discuss the existing law of the United States, he quietly ignores the distinct declaration of *jus soli* in the fourteenth amendment and enlarges upon the Congressional definition of citizenship in the act of April 9, 1866 — which, by the way, he invariably calls the "act of 1868." The act of 1866 apparently excepts some children of aliens from the operation of the *jus soli*, since these may be "subject to" a "foreign power." The fourteenth amendment does not exclude this class of persons, since they are assuredly "subject to the jurisdiction" of the United States. (See McKay *vs.* Campbell, 2 Sawyer, 118.) An ordinary American lawyer would assume that, in case of conflict, the constitutional definition must override the statutory definition. Mr. Webster does not discuss the point: he dismisses the fourteenth amendment with the simple remark that it was intended to secure to the negroes the civil rights enjoyed by the whites.

Another amazing dictum of our author is that the expatriation act of July 27, 1868, is "self-explanatory." If this be true, our executive department must be very dense, for it has more than once asked Congress for explanatory legislation. The law of 1868 declares that expatriation is "a natural and inherent right," and that any denial or restriction of this right is "inconsistent with the fundamental principles of this government"; but the law does not indicate by what means the individual may expatriate himself. It not being evident what acts would be sufficient to work expatriation, the executive department has repeatedly urged upon Congress the necessity of regulating this question by law.

This Congress has not done; and it therefore seems doubtful whether an American citizen can even now expatriate himself (except under the provisions of our expatriation treaties), since the law does not say *how* he is to do it.

The book is full of confused thinking and confusing writing. It is of no value to the lawyer; and for the student of political science its only interest is *culturhistorisch*. It is a striking illustration of the survival of eighteenth-century theories.

MUNROE SMITH.

*Principles of Economics.* By ALFRED MARSHALL, Professor of Political Economy in the University of Cambridge. Volume I. Second edition. London and New York, Macmillan and Co., 1891.

The early appearance of a second edition of Professor Marshall's work reveals, not the value of the book, — for that was too fully shown by the first edition to need further attestation, — but the quality of the reading public that demands so much literature of this rare order. While the new features of the present edition are chiefly in detail and arrangement, they add to the clearness with which the author expresses his view at a number of test points. Book V, which contains the substance of Books V and VI of the earlier edition, embodies, as the writer says, more of his life work than any other part, and is now in a form to make that work most effective in influencing economic thought.

The changes made in Book VI are of much interest. It may be remembered that in a notice of the work published in this QUARTERLY in March of the present year exception was taken to the application of the so-called law of substitution to labor and capital regarded in their entirety. The criticism was not intended to convey the impression that, in Professor Marshall's view, capital, as it increases, substitutes itself for labor to the extent of remanding labor to idleness. Against expressing such an erroneous view as this the author guarded himself even in the earlier edition; and in the present one he does so in emphatic terms. More capital means a greater demand for labor, and not a smaller demand. The question raised by the former criticism was whether the relation of mutual substitution that can be predicated of specific forms and limited quantities of labor and of capital can, as a matter of theory, be predicated of the entire supply of those agents. It is a dialectical point that cannot here be discussed, and that does not need to be discussed in connection with the present edition of Professor Marshall's work. The description of what actually happens when capital becomes more abundant is given in the latter part of Book V in terms that are wholly admirable.

J. B. CLARK.